IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2003

CORAM

THE HON'BLE MR. JUSTICE M.KARPAGAVINAYAGAM
AND
THE HON'BLE MR. JUSTICE AR. RAMALINGAM

Crl.Appeal No. 518 of 2000

1.Muruganandam
2. Sankar .. Appellants/
Accused 1 & 2

-Vs-

State rep. by Inspector of Police
Ramanathapuram Bazaar Police Station
Ramanathapuram District
(Crime No.334/1997)
.. Respondent/
Complainant

Appeal filed under Section 374 Cr.P.C. against the judgment of
conviction and sentence passed by the learned District and Sessions Judge for
Communal Clash Cases, Madurai in S.C. No.31/1999 dated 17.5.2000.

!For appellants :: Mr. O. Venkatachalam

^For respondent :: Mr.E. Raja,
Addl. Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by

M. KARPAGAVINAYAGAM,J.,)

Murugesan (A1) and Sankar (A2) were convicted for the offence under
Section 302 read with 149 I.P.C. and sentenced to undergo life imprisonment.

Challenging the same, this appeal has been filed.

2. The facts leading to conviction are as follows:

a) The appellants/A1 and A2 and other accused (A3 to A6) belong to Scheduled Caste Community. The deceased Sakthipandian, an auto driver, belongs to Thevar Community. P.W.6 Ganesan is the brother-in-law of the deceased. P.W.7 Marithai is the wife of the deceased.
b) One year prior to the date of occurrence, the accused No.1 Muruganandam engaged the auto of the deceased, but did not pay the hire charges. On that reason, there was a quarrel between them. Sometimes later, the deceased Sakthipandian on the eve of Thevar Guru Pooja, fitted mike set in a van and displayed songs praising Thevar in public place and on noticing this, the accused 1 to 6, who belong to Scheduled Caste raised objection. Due to this also there was a quarrel between these two groups.

c) Some days prior to the date of occurrence, one Shanmugiah Pandian, the Vice President of Thevar Youth Forum was arrested by the police. Opposing this arrest, the deceased Sakthipandian arranged to get posters raising objection slogans against the police and pasted the same in public places. Due to this also, there was a quarrel between the accused and the deceased.

d) On 24.12.1997 at about 3.00 p.m., A1 to A3 came to the auto stand and requested the deceased to take them to Lanthai to hand over the TV which got repaired, to the Panchayat Union. Accordingly, A1 to A3 were taken and after handing over the TV to the Panchayat Union, they came back. Near the place of occurrence, other accused were waiting. A1 by pulling the shirt of the deceased, the driver of the auto, asked him to stop the vehicle. The deceased stopped the auto and thereafter, the deceased was forcibly taken from the auto to the place of occurrence, where he was stabbed to death by all the accused.

e) On hearing of the news that a dead body was found lying near the auto, P.W.6, the brother-in-law of the deceased went and informed P.W.7 and came to the spot. In the meantime, P.W.1 Chelliah, Village Assistant saw the dead body in the evening with multiple injuries and identified the dead body as that of Sakthipandian. He then went to Bazaar Police Station and gave Ex.P.7 complaint to P.W.11 Sub inspector of Police, who registered a case in Crime No. 334/1997 under Section 302 I.P.C. Ex.P.8 is the printed First Information Report.

f) P.W.14 Kumar, Inspector of Police, in charge of the police station, came to the scene at 6.45 p.m. He received the copy of the F.I.R. He prepared Ex.P.2 observation mahazar and drew Ex.P.3 rough sketch. He recovered M.O.1 bloodstained earth, M.O.2 sample earth and other things available in the scene of occurren ce. He also recovered M.O.5 auto. On the requisition given by P.W.14, P.W.17 Finger Print Expert came and taken the finger prints available in the auto. He also took the finger prints of the deceased. P.W.14 conducted inquest from 8.30 p.m. to 10.30 p.m. and examined the witnesses including P.W.6 and P.W.7. Ex.P.11 is the inquest report. The body of the deceased was sent to Government Hospital to conduct

post-mortem.

g) P.W.10 Dr. Rathinam conducted post-mortem on the body of the deceased on 25.12.1997 at 11.30 a.m., and he noticed that the deceased had sustained 24 stab injuries of various dimensions. He opined that the deceased would appear to have died of shock due to injury to lung, trachea and bleeding due to multiple injuries. Ex.P.6 is the postmortem certificate issued by him.

h) During the course of inquest, P.W.14 came to know about the involvement of A1 to A6 in the case. Therefore, he took steps to arrest the accused. On 26.12.1997, he arrested A3, A4 and A5 and recovered M.O.6 knife from A3. On 28.12.1997, he arrested A1 Muruganandam and A2 Sankar and in pursuance of their confession, M.O.7 and M.O.8 knives were recovered from A2. On 29.12.1997 he arrested A5. On his confession, he recovered M.O.9 aruval. After arrest, finger-prints were taken from the accused and the same were sent to P.W.17 Finger Print Expert to compare the finger prints taken from the auto. After making initial investigation, he handed over the same to the regular Inspector P.W.15. P.W.15 took up further investigation on 31.12.1997 and examined witnesses.

i) P.W.16 another Inspector of Police took up further investigation and after obtaining opinion from the Public Prosecutor, he filed the charge sheet against the accused for the offence under Sections 147 ,148, 342,302 and 149 I.P.C.

j) After framing appropriate charges, the trial Court went on with the trial. During the course of trial, on the side of the prosecution, P.Ws. 1 to 17 were examined, Exs. P.1 to P.29 were filed and M.Os.1 to 12 were marked. The Chemical Analyst's report and Serologist's report were marked as

Court Exhibits C.1 and C.2. Through P.W.17, the reports of the Finger Print Expert viz., Ex.P.24 to P.29 were marked to show that the finger prints taken from the auto on both sides were found tallied with that of A1 and A2.

k) When the appellants/accused 1 and 2 were questioned under Section 313 Cr.P.C., they denied their complicity in the crime.

l) After considering the materials on record,though the trial Court acquitted A3 to A6 in respect of all the charges, convicted A1 and A2 , the appellants herein only for the offence under Section 302 read with 149 I.P.C. and sentenced them each to undergo life imprisonment. Having aggrieved by the said judgment, the present appeal has been filed by accused 1 and 2.

3) Mr. O.Venkatachalam, learned counsel appearing for the appellants would take us through the entire evidence and point out various infirmities in the evidence and contend that the prosecution case would bristle with infirmities and as such, the appellants are entitled to be acquitted.

4) With reference to the infirmities pointed out by the learned counsel for the appellants, we have heard the learned Additional Public

Prosecutor at length.

5) We have given our anxious consideration to the submissions made by the learned counsel on either side and also gone through the records.

6) On perusal of the entire records, it is seen that most of the witnesses turned hostile. The only two witnesses available on record to connect the accused with the crime are P.W.6 and P.W.17.

7) P.W.6 would speak about A1 to A.3 coming to the auto stand and engaging the auto of the deceased and went to Lanthai for handing over TV to the Panchayat Union Office at about 3.00 p.m. on 24.12.1997. P.W.17 Finger Print Expert would give opinion that finger prints taken from the auto were found tallied with the finger prints of the accused 1 and 2. Since no other evidence available with reference to the actual occurrence and also in regard to the overt acts attributed to each of the accused, the trial Court was constrained to acquit all the accused in respect of the main charge under Section 302 I.P.C. However, the trial Court, merely on the basis of the evidence of P. W.6 and P.W.17, convicted A1 and A2 alone for the offence under Section 302 read with 149 I.P.C.

8) On analysing the materials available on record, we are to conclude that the evidence of P.W.6, who had last seen the deceased in the company of the accused 1 to 3 is not credible and as such, the same cannot be acted upon to connect the appellants with the crime in question. The reasons for the above conclusion are the following.

9) P.W.6 would state that A1 to A3 came to the auto stand and engaged the auto of the deceased at about 3.00 p.m. on 24.12.1997. It is the specific case of the prosecution that earlier, there were quarrels between the accused and the deceased on so many occasions. According to P.W.6, A1 engaged the same auto for some other purpose, but did not make payment of hire charges. With reference to that, there was a quarrel between the accused and the deceased. It is further stated by P.W.6 that on the eve of Thevar Guru Pooja, the deceased fitted the mike set in the van and displayed songs in praise of Thevar and this was objected to by all the accused and due to this also, there was a quarrel between the accused and the deceased.

10) Apart from that, when Shanmugiah Pandian, the Vice-President of Thevar Youth Forum was arrested by the police, the deceased pasted posters, opposing the act of the police in arresting Shanmugiah Pandian and in protest, the accused came and picked up quarrel with the deceased. In the light of the the materials with reference to enmity between these two groups, the evidence of P.W.6 that A1 to A3 came on that day at about 3.00 p.m. and engaged the auto of the deceased to go to Lanthai, which is situate 12 kms away from the auto stand, is not believable. When there was enmity between the deceased and the accused, with reference to the non payment of hire charges, it is quite artificial to say that the deceased readily agreed to take the accused 1 to 3 to go to Lanthai to hand over the TV to the Panchayat Union.

11) Furthermore, on coming to know that a dead body was lying down near the auto, P.W.6 went and informed his sister P.W.7. However, he had not chosen to inform P.W.7 that at about 3.00 p.m. accused 1 to 3 engaged the

deceased auto to go to Lanthai and thereafter, the deceased did not turn up. His evidence can be analysed from yet another angle.

12) According to P.W.7, one Pandian was present at the scene of occurrence, when she went to the spot. She also specifically stated that he was examined by the police.

13) On a perusal of Exs.P.11 inquest report, it is noticed that it has been specifically written in Col.No.4 that the last person who saw the deceased alive is one Pandian. Despite this reference about Pandian, P.W.14 would state that Pandian was not examined during the course of inquest. On the other hand, he got the information about the presence of Pandian, who last saw the deceased alive, only from Ganesan P.W.6. Unfortunately, P.W.6 has not stated anything about the presence of Pandian in his evidence. When P.W.7 would specifically admit that the said Pandian, who had last seen the deceased alive, was available at the scene and he was examined by the police, it is not known as to why P.W.14 had failed to state that Pandian was not available and so, he was not examined. Similarly, it is not known as to why he has mentioned the name of Pandian as the person, who had last seen the deceased alive in Col.4. This would make it clear that the prosecution has not placed the correct version before the Court by examining the said Pandian whose name has been mentioned in the inquest report as one of the witnesses. The statement made by P.W.14 that Pandian was not available for examination, cannot be reliable in view of the evidence given by P.W.7 that Pandian was available and he was examined by the police. This shows that P.W.14 has suppressed the fact that the said Pandian, who is the material witness, was examined by the police during the investigation. Despite this, for the reason best known to the Investigating Officer, the said Pandian was not even cited as a witness in the charge sheet.

14) The next piece of evidence available on record to connect the appellants with the crime is the opinion of the Finger Print Expert P. W.17. It is curious to note that even though P.W.14 sent the requisition along with the finger prints of the accused to P.W.17, who compared the finger prints of the accused with the finger prints taken from the auto, the said requisition has not been marked through P.W.14.

15) It is evident that P.W.17 after comparing the finger prints of the accused with the finger prints taken from the auto, sent the result to the police station on 6.1.1998 The report dated 6.1.1998 enclosing the requisition has not been marked through P.W.15. As a matter of fact, P.W.15 would not at all refer to this in his evidence. When P.W.16 was examined, when these documents were brought to the notice of P.W.16 by the Court, he stated before the Court that in the case diary it is mentioned that requisitions have been sent to the Finger Print Expert for comparison. Only thereafter, the Finger Print Expert was examined as P.W.17, through whom all these documents viz., Exs.P.24 to P.29 were marked. These documents would show that finger prints of A1 and A2 were found tallied with the finger prints taken from the auto of the deceased. However, it is pointed out that no steps have been taken by the Officer concerned to obtain permission from the Court before taking the finger prints of the accused.

16) It is the statement of the accused under Section 313 Cr.P.C. that

they were compelled to give their finger prints. Though it is stated by P.W.17 that he went to the spot on 24.12.1997 itself and took the chance finger prints found on the auto, there is no reason as to why he had not sent the final reports such as Exs. P.24 to P.29 immediately either to the Court or to the Police Officer. As a matter of fact, all these documents have been prepared even according to P.W.17 only after getting the summons from the Court.

17) However, it is to be seen that under Section 4 of the Prisoners' Act, the Police Officers are conferred with power of taking finger prints. It is not the case of the accused that finger prints were not taken from the accused. It is the specific evidence of P.W.17 that even on 24.12.1997, he was present at the scene of occurrence. It is also clear that A1 and A2 were arrested on 28.12.1997 and only thereafter their finger prints were taken. It is true that it can be urged by the prosecution that there is some material to connect the accused with the crime in question viz., the finger prints taken from the auto were found tallied with the finger prints taken from the accused. Even assuming that Finger Print Expert's opinion is available, which is an incriminating material against the accused, in our view, that would not be sufficient to connect the accused with the crime in question.

18) As pointed out by the learned counsel for the appellants, it has been held by the Supreme Court in the decision in MAHMOOD VS STATE OF U.P. (1976 Supreme Court Cases (Criminal) 72 that it would be highly unsafe to convict the accused on a capital charge solely on the opinion of the finger print Expert even if such opinion is assumed to be admissible under Section 45 of the Evidence Act in the absence of any independent corroboration. This observation of the Supreme Court has been reiterated by a Division Bench of this Court in the decision in RAVANAN VS STATE, INSPECTOR OF POLICE (1993 MLJ (Criminal) 62). Under those circumstances, we are of the view that the evidence available on record would not be sufficient to hold that the appellants/accused 1 and 2 are the culprits who committed the murder of the deceased.

19) Further, the trial Court has specifically stated in its judgment that there is no evidence to show that the appellants participated in the offence of murder. However, the trial Court would hold that in view of the evidence available on record, they are liable to be convicted for the offence under Section 302 read with 149 I.P.C only.

20) It is to be noticed that there is no charge framed under Section 302 read with 149 I.P.C. Moreover, it is not the finding of the trial Court that five persons or more had participated in the occurrence. Under those circumstances, with reference to the common object to commit the murder of the deceased, there are no materials to show that the appellants/accused 1 and 2 along with others had gone to the spot with the common object of committing the murder of the deceased.

21) In view of the above reasons, we are of the considered opinion

that the appellants/accused 1 and 2 are entitled to be acquitted by giving benefit of doubt. Accordingly, the appeal is allowed and the conviction and sentence imposed on the appellants/accused 1 and 2 are set aside and they are acquitted. The appellants /accused 1 and 2 are directed to be set at liberty forthwith, unless they are required in connection with any other case.

Index: Yes
Web site: Yes

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To
1. The District and Sessions Judge
for Communal Clash Cases
Madurai.

2. The Superintendent, Central Prison, Madurai

3. The Public Prosecutor, High Court, Madras

4. The District Collector,
Ramanathapuram

5. The Director General of Police, Chennai

6. The Inspector of Police
Ramanathapuram Bazaar Police Station
Ramanathapuram